

Attorney Docket No.: **DEX-0247**  
Inventors: **Sun et al.**  
Serial No.: **10/082,828**  
Filing Date: **October 29, 2001**  
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#### **REMARKS**

Claims 1-5, 7 and 8 are pending in the instant patent application. Claims 1-5 and 7-8 have been rejected. Claim 1 has been amended. No new matter is added by this amendment. Reconsideration is respectfully requested in light of these amendments and the following remarks.

#### **I. Rejection of Claims 1-5, 7 and 8 under 35 U.S.C. § 112, first paragraph - Written Description**

The rejection of claims 1-5, 7 and 8 under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed had possession of the claimed invention, has been maintained. The Examiner suggests that the amended limitation "a nucleic acid molecule having at least 85% sequence identity to the nucleic acid molecule of (a) or (b)" has not changed the breadth of the claimed invention, which encompasses sequences beyond that of SEQ ID NO:75.

Thus, while Applicants respectfully disagree with the Examiner, Applicants have amended claim 1 by deleting part (d) drawn to nucleic acid molecules having at least 85% identity to SEQ

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ID NO:75 or a nucleic acid molecule encoding SEQ ID NO:207. As this amendment removes all language from the claim identified by the Examiner not to be supported by the written description, this amendment is believed to overcome the pending rejection under 35 U.S.C. § 112, first paragraph. Withdrawal of this rejection under 35 U.S.C. § 112, first paragraph is therefore respectfully requested.

**II. Rejection of Claims 1, 3-5, 7 and 8 under 35 U.S.C. § 102(a)**

The rejection of claims 1, 3-5, 7 and 8 under 35 U.S.C. § 102(a) as being clearly anticipated by Birren et al. (May 2000) has also been maintained as the Examiner suggests that Birren et al. discloses a nucleic acid molecule that has at least 85% sequence identity to the nucleic acid molecule of SEQ ID NO:75. In particular, the Examiner suggest that Birren teaches a sequence with a Best Local Similarity of 97.1%.

As discussed in Section I, however, claim 1 has been amended by deleting part (d) relating to nucleic acid molecules with at least 85% identity to SEQ ID NO:75 or a nucleic acid molecule encoding SEQ ID NO:207.

Thus, the Birren reference does not anticipate the claims as amended.

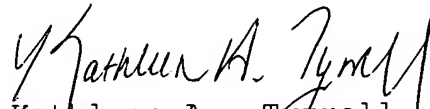
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Withdrawal of this rejection under 35 U.S.C. § 102(a) is therefore respectfully requested.

### III. Conclusion

Applicants believe that the foregoing comprises a full and complete response to the Office Action of record. Accordingly, favorable reconsideration and subsequent allowance of the pending claims is earnestly solicited.

Respectfully submitted,



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